



July 29, 2011

**VIA ECFS**

Marlene Dortch, Secretary  
Federal Communications Commission  
445 12th St., SW  
Washington, DC 20554

**Ross A. Buntrock**

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**Re: Ex Parte Presentation: CC Docket No. 01-92, WC Docket No. 10-90,  
WC Docket No. 07-135, WC Docket No. 05-337, GN Docket No. 09-51**

Dear Ms. Dortch:

Yesterday, July 28, 2011, former Commissioner Harold Furchtgott-Roth, David Carter, and I met with Christine Kurth, Legal Advisor to Commissioner McDowell, on behalf of Northern Valley Communications, LLC and Bluegrass Telephone Company, Inc. d/b/a Kentucky Telephone. We met to discuss the Commission's on-going ICC/USF reform rulemaking and, in particular, the proposed rules relating to so-called "access stimulation."

In particular, we discussed the comments of Commissioner Furchtgott-Roth filed in these dockets on May 25, 2011.<sup>1</sup> In those comments, after reviewing a number of the public comments filed in response to the Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, the Commissioner made the following findings:

- The NPRM fails to articulate a compelling need for new rules much less a statutory necessity or even statutory preference for the specific proposed new rules;
- The NPRM misuses the word "arbitrage";
- Rather than a rule based on statutory necessity or reflective of expanding competition, the NPRM proposes a rule based on an assessment of profits under current market conditions, ultimately favoring one group of firms over another;
- Even if writing rules based on an assessment of profits under current market conditions were appropriate, the NPRM presents no new verifiable information upon which to base those rules;
- The NPRM proposes a dangerous precedent of regulating revenue sharing;

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<sup>1</sup> See FCC, Docket 07-135, Ex Parte Comments of H. Furchtgott-Roth (May 25, 2011), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021655286>; see also FCC, Docket 07-135, Comments of H. Furchtgott-Roth (November 30, 2010), available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7020921723>.

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- The NPRM proposes to expand rather than contract price regulation despite the presence of more rather than less competition;
- The NPRM fails to recommend deregulation when deregulation is both the obvious and lawful solution; and
- The NPRM fails to comply with the Regulatory Flexibility Act.

We also discussed the need for the Commission to consider carefully Northern Valley and Kentucky Telephone's alternative proposal regarding the appropriate CLEC benchmark rate for conference calling traffic.<sup>2</sup> Specifically, this proposal urges the use of the "local switching" element for NECA Rate Band 1 as the appropriate CLEC benchmark rate for traffic meeting whatever trigger the Commission may ultimately adopt. The NECA Rate Band 1 local switching element as a benchmark has the distinct advantage of ensuring that no carrier is disadvantaged based on the state in which it operates. This high degree of certainty would also reduce the likelihood of future litigation regarding so-called "access stimulation."

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



Ross A. Buntrock

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<sup>2</sup> See FCC, Docket 07-135, Northern Valley Communications, LLC and Bluegrass Telephone Company d/b/a Kentucky Telephone Initial Comments (April 1, 2011) at 15 - 16, available at: <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021236795>.